

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CLAUDE FLAGG AND MARILYN)	No. 62538-1-I
FLAGG, husband and wife,)	
)	
Appellants,)	
)	
v.)	
)	
WILLIAM H. TURNER, III AND)	UNPUBLISHED OPINION
MT. ERIE CONSTRUCTION, INC.;)	
AND CONTRACTORS BONDING AND)	FILED: July 27, 2009
INSURANCE COMPANY, Bonding)	
Company for Defendants,)	
)	
Respondents.)	
)	

Ellington, J. — Claude and Marilyn Flagg appeal the trial court’s order enforcing an arbitration agreement and dismissing their claims against Mt. Erie Construction and William Turner. Because an order compelling arbitration is not final and therefore not appealable, we dismiss the Flaggs’ appeal.

On August 6, 2008, Claude and Marilyn Flagg filed a complaint for breach of contract and fraud against the following defendants: (1) “William H. Turner, III, (“Turner”), dba Mt. Erie Construction, Inc.”; (2) Mt. Erie Construction, Inc.; and (3) Contractors Bonding and Insurance Company, “the bonding company for Defendant Turner and Mt. Erie Construc[t]ion, Inc.” Clerk’s Papers at 1–2. The complaint states,

“Plaintiffs and Defendants entered into a Construction Contract Agreement for the construction of a 5,590 square foot residence on October 26, 2006.” Clerk’s Paper at 2. The Flaggs alleged that Turner and Mt. Erie breached the written agreement as well as subsequent modifications and verbal agreements. The Flaggs further alleged that Turner made false statements to them, that they “had a right to rely on defendant Turner’s representations as they had a contract with him for the construction of the residence,” and that they were damaged as a result of their reliance on Turner’s false statements. Clerk’s Papers at 11.

On August 15, the defendants filed a motion to dismiss based on the construction contract, which states, “The parties shall endeavor to resolve their disputes by mediation,” and “[c]laims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation . . . shall be decided by arbitration.” Clerk’s Papers at 41–42. On August 25, the trial court found that the “parties entered into an extremely broad mediation and arbitration agreement” that was “clear and unambiguous,” and ordered that the “mediation/arbitration clauses are enforced. This proceeding is dismissed.” Clerk’s Papers at 144. The Flaggs filed an amended complaint and a motion for reconsideration on September 4. The trial court denied reconsideration on September 16.

The Flaggs appeal, arguing that (1) Turner is not a party to the written contract; (2) their fraud claim against Turner as an individual is therefore not subject to any arbitration agreement in the written contract; and (3) the trial court failed to conduct an evidentiary hearing to determine whether the written contract was valid following the

parties' oral modifications.

The Uniform Arbitration Act (UAA) governs arbitration agreements entered into after January 1, 2006. RCW 7.04A.030. The trial court determines whether an arbitration agreement exists and whether a controversy is subject to such an agreement. RCW 7.04A.060(2). Where a motion to compel arbitration pursuant to an arbitration agreement is opposed, the trial court "shall proceed summarily to decide the issue" and order the parties to arbitrate unless it finds that there is no enforceable arbitration agreement. RCW 7.04A.070(1). Although the UAA provides for appeals of certain orders,¹ "an order compelling arbitration is not final and therefore is not appealable." Teufel Const. Co. v. American Arbitration Ass'n, 3 Wn. App. 24, 25, 472 P.2d 572 (1970).

Here, after a hearing, the trial court summarily decided that the broad arbitration agreement included in the written construction contract "remained in effect throughout, whether or not the scope or nature of the contract was modified" and that the "parties definitely intended to arbitrate if mediation failed as to all issues." Clerk's Papers at 144. The trial court's order enforcing the arbitration agreement and dismissing the Flaggs' claims is not appealable. To the extent that any issues submitted to arbitration were not properly subject to arbitration under the parties'

¹ RCW 7.04A.280(1) provides: "An appeal may be taken from: (a) An order denying a motion to compel arbitration; (b) An order granting a motion to stay arbitration; (c) An order confirming or denying confirmation of an award; (d) An order modifying or correcting an award; (e) An order vacating an award without directing a rehearing; or (f) A final judgment entered under this chapter." The Flaggs do not claim that RCW 7.04A.280(1) provides a right to appeal the order at issue here.

agreement, a party objecting to arbitration of such issues may challenge the validity of an adverse award when the other party moves to have it confirmed. See, e.g., ACF Prop. Mgmt., Inc. v. Chaussee, 69 Wn. App. 913, 922, 850 P.2d 1387 (1993) (citing Teufel, 3 Wn. App. at 27).

Dismissed.

Edington, J

WE CONCUR:

Grosse, J

Leach, J.